system of government. To hold that Congress and the states have equal power here would change the dual system. In *Gibbons* v. *Ogden,* 9 Wheat. 1, at p. 211, Chief Justice Marshall said that state laws enacted by the states in the exercise of their acknowledged sovereignty, not transcending their powers, must give way to laws passed by Congress in pursuance of the Constitution where contrary to them, for the Acts of Congress are supreme. See *Wisconsin* v. *Duluth,* 96 U. S. 379. In *Keller* v. *U. S.,* 213 U. S. 138, which held that an Act of Congress was invalid because it encroached upon the police power of the state, Justice Brewer says, at p. 145: "Doubtless it not infrequently happens that the same act may be referable to the power of the state as well as to that of Congress. If there be collision in such cases the superior authority of Congress prevails." The principal case relies on *Ex parte Guerra,* 110 Atl. 224. In that case the plaintiff, convicted under a state prohibition law, maintained that the war-time Prohibition Act of Congress superseded all state legislation, but it was held that Congress acted under valid war power and the state under a valid exercise of its police power, and that the state statute does not yield to that of Congress *unless its enforcement conflicts* with the Acts of Congress. It was, in that case, held not to conflict. It is submitted that any proper adjustment to our dual system of government requires the state statute to yield in case of manifest repugnance to the Act of Congress. See *City of Shreveport* v. *Marx* (La., 1920), 86 So. 602.

CONSTITUTIONAL LAW—DUE PROCESS—EXEMPTION OF FARMER FROM FOOD CONTROL UNDER LEVER ACT.—Under section four of the Lever Act it is made unlawful for persons to perform any acts knowingly in an attempt to enhance prices, or prevent production, to cripple transportation of necessaries, or to attempt to acquire a monopoly of such necessaries, and it is also made punishable by fine or imprisonment for persons to combine or conspire to accomplish such ends. It is also provided that this section shall not apply to farmers or associations of farmers, and upon the basis that this was a classification without a reasonable basis it was *held* that this section of the Act was invalid. *U. S.* v. *Yount* (D. C., W. D., Pa., 1920), 267 Fed. Rep. 861.

It is unquestioned that the separate states in the exercise of their police powers may subject the citizen to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand. To do this, classification of the different subjects or persons to be regulated is always permissible so long as the classification rests upon some difference bearing a reasonable and just relation to the subject matter in respect to which the classification is proposed. *Connolly* v. *Union Sewer Pipe Co.,* 184 U. S. 540, 46 L. Ed. 679. Yet this classification may not be arbitrary and without reasonable basis. The court in the principal case, following the precedent in the *Connolly* case, takes the stand that since the purpose of the act is to prevent the hoarding, the monopolizing, the manipulation of necessaries so as to raise prices and to allow profiteering, the exemption of the

farmer was omitting a class subject to the same temptations to combine for these purposes as any other class, and thus there was no reasonable basis for such a discrimination. Yet this stand is subject to the criticisms that appear in Mr. Justice McKenna's dissenting opinion in that case, in which he takes the view that the legislature has a wide range of discretion in the matter of classification, and that there is no evidence in the case to show that there was not a valid reason for legislating against combinations in the hands of traders, persons, and corporations, and exempting producers. *The American Sugar Ref. Co.* v. *Louisiana,* 179 U. S. 89, 21 Sup. Ct. 43, seems authority for such a classification, despite the fact that it is distinguished in the *Connolly* case, for, in the *Sugar Refining Company* case a certain tax is imposed upon the manufacturers of sugar and not upon the growers of that article, while in the principal case certain conduct is merely penalized as to certain classes in which farmers and associations of farmers are not included. Other grounds for regarding this a supportable classification appear in the fact that the aim of the Lever Act as a whole was to aid the production of necessities. That the legislature saw fit to exempt farmers from the section punishing monopolies, combinations in restraint of transportation, profiteering, etc., indicates that the legislators evidently considered that the danger of such evils was not so great in the case of this particular class of producers and that they considered that the need for farm products was so great as to warrant encouraging farmers to the extent of allowing them a free hand in the means that they might take to strengthen their position. Certainly there are distinct differences in the situation of the farming class, and it seems that the legislature might be left to determine the relation of these differences to the acts declared invalid. In analogous cases similar exemptions have not been regarded as arbitrary, though class distinctions are scarcely as marked as in the principal case. In *State* v. *McKay,* 137 Tenn. 280, 193 S. W. 99, certain restrictions placed upon the seller of seeds were not applied to the farmer vendor in certain kinds of sales, and this was held not a violation of the "equal protection" clause of the Constitution because such sales were probably less open to the practice of deception. Whether the dangers of combines and conspiracies on the part of farmers to raise prices are proportionately more in the principal case than danger of deception in the case just mentioned seems doubtful. In *St. John* v. *New York,* 201 U. S. 518, 30 Sup. Ct. 443, the non-producing vendor of milk was made liable by statute to certain fines and penalties to which the producing vendor was not liable on a showing that the milk was in the same condition as at the time when it had left the herd. Whether there is a more valid distinction between such classes and those established by the Lever act in the present case is open to question.

CONSTITUTIONAL LAW—POWER OF LEGISLATURE TO REGULATE RENTAL RATES.—In an action by a landlord to recover possession the tenant relied upon the Ball Rent Law passed by Congress for the regulation of the busi-